

# Office of Public Guardian



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Public Guardian,  
Director of the Office of Public Guardian  
June 2016

page number

Feb 2016

## Duties of the Office of Public Guardian

Public Guardianship Act  
Neb. Rev. Stat. §§30-4101 to 30-4118



1. Act as guardianship/conservatorship of last resort
2. Safeguard the rights of individuals by supporting least restrictive manner
3. Model the highest standard of practice for guardians/conservators to improve performance of all guardians/conservators in state
4. Act as resource to guardians/conservators for information, and support to enhance [guardian/conservator] success
5. Maintain training programs statewide to offer training curricula
6. Recruit member of public and family to serve as guardians or conservators, make reasonable effort to locate a successor guardian/conservator
7. Develop a uniform system of reporting and collecting statistical data regarding guardianship/conservatorship

## Office of Public Guardian

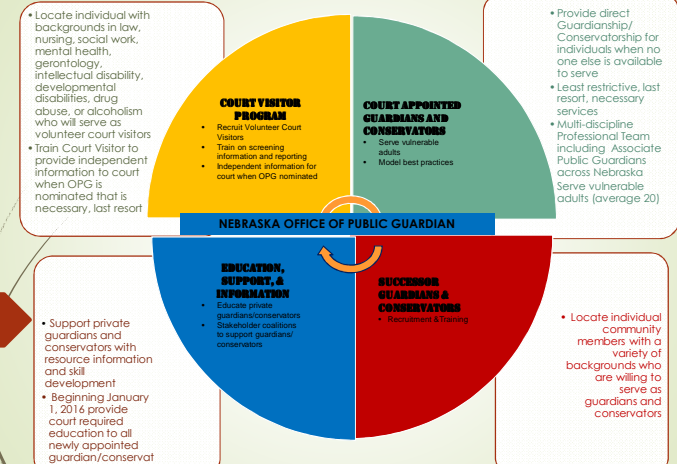


Creation of the Office of Public Guardian LB 920 (2014)- Senator Coash

- In the Administrative Office of the Courts
- January 1, 2015
- Originally 12 Associate Public Guardians
- 40 individuals per APG (480 wards/protected persons)

LB 934 (2016)- Senator Coash

- Multi-Discipline Professional Team
  - Associate Public Guardians, Associate Public Guardian Legal Counsels, Business Manager, Education and Outreach Coordinator
- 20 cases per Fulltime Multi-Professional Team member
  - National standard for guardian and conservator case management
  - Complexity of OPG cases; 3.4 hours per ward per APG per week
- Serve approximately 360 wards/protected persons statewide



<https://supremecourt.nebraska.gov/17052/frequently-asked-questions>

## FREQUENTLY ASKED QUESTIONS



- Advisory Counsel for Office of Public Guardian (OPG)
- Assistance to Private Guardians and Conservators
  - Education class schedule 2016 and registration process
- Volunteer Court Visitor Information
- General Questions
  - Duties, oversight
  - Staff, Associate Public Guardian contact information
  - Court process and Public Guardianship Act
  - How to report concerns to the court for a ward's safety

## OPG Organizational Implementation Best Practices



- Financial, medical, personal case management of ward and protected person information is web based and available to APGs on computer, I-phone, 24/7 to insure access to information during decision making.
- Centralization of processes for standardization, quality, efficiency
- Court e-filings completed and received in Lincoln office
  - As of May 2016 OPG has filed 1120 documents and received 1139 from others through the courts
- OPG Ward and Protected Persons Finances
  - All ward/protect persons finances are completed by Business Manager in Lincoln Office, reconciled by APGs
  - Separates job functions results in segregated duties for checks and balances; budget, case management and reconciliation by APGs who do not have access to wards/protected persons fund

## Criteria for Appointment



- Office of Public Guardian may provide necessary services (§31-4102)(2)(e))
  - No one suitable or available
  - Unwilling, unable, or inappropriate guardians/conservators
  - Present guardian and conservator does not provide protection or abuses or neglects individual
  - Alternatives to full guardianship and less intrusive means of intervention explored
  - Public guardian/conservator only when needs cannot be met through less intrusive means

## Appointment of Office of Public Guardian



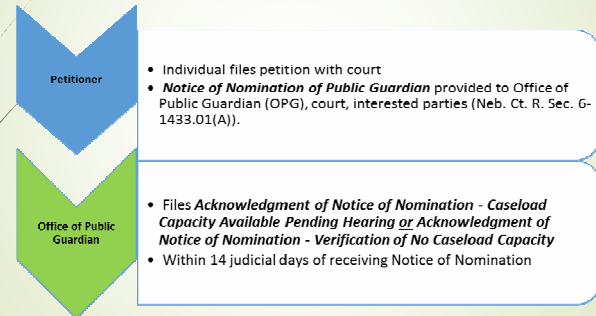
- Court may order appointment of Public Guardian (§30-4112)
- Only after notice to Public Guardian and determination that the appointment is necessary (§30-4112) and
- Determination of necessary may require the court to ascertain whether there is any other alternative to public guardianship/conservatorship (§30-4112)
- "Least restrictive" protection protocol (§30-4102)(1), (§30-4105)(7), (§30-4112)

## Court Rules for OPG §6-1433.01 and §6-14.33.02



- Nomination of OPG
  - OPG does not file petitions for g/c;
  - Attorney filing petition must file Notice of Nomination
  - OPG determines if there is initial case capacity
    - Case in location and w/in average number of wards per team member
    - Transfer case to county of residence to insure appropriate oversight of OPG and case capacity
  - Court visitor is appointed to provide screening information to court
    - Volunteer court visitor, Court visitor, or Guardian ad litem
    - Report on required court form

Nebraska Public Guardian Nomination Process  
Forms: <https://supremecourt.nebraska.gov/forms>  
Flow chart (below 1 of 4 pages) see: CC 16:2.221 )



## Nomination and OPG Appointment requires that:

- Proper notice was given to the Office of Public Guardian;
- The petitioner has acted in good faith and due diligence to identify a guardian or conservator who would serve in the best interest of the alleged incapacitated person;
- The appointment of the Office of Public Guardian is:
  - Necessary and
  - Does not exceed the caseload limitations
- The visitor or guardian ad litem report has provided supporting evidence that
  - No person is available for appointment as guardian or conservator,
  - All options available to support the individual in the least restrictive manner possible has been explored, and
  - Guardianship is a last resort; and
- There is no other alternative than to appoint the Office of Public Guardian



## Court Visitor: Expertise and experience with populations

**Neb. Rev. Stat. §30-2624:**

- A visitor shall be trained in law, nursing, social work, mental health, gerontology, or developmental disabilities and shall be an officer, employee, or special appointee of the court with no personal interest in the proceedings.
- "The court shall maintain a current list of persons trained in or having demonstrated expertise in the areas of mental health intellectual disability, drug abuse, alcoholism, gerontology, nursing, and social work, for the purpose of appointing a suitable visitor."

*"Court visitors serve as the eyes and ears of probate courts, making an independent assessment of the need for guardianship/conservatorship"*  
National Probate Code Standard 3.3.4 Court Visitor, Commentary



## OPG Volunteer Court Visitor Program:

- Recruiting Volunteers
- Processing Applications
- Developing and providing initial on-line and live training opportunities
- Screening Tool for Volunteer Court Visitor
- Required Court Visitor/ GAL Report form (**Neb. Ct. R. §6-1433.01(E)**)
- Volunteer Court Visitor contact courts and to assist with Court Visitor Registry for County Courts
- Court responsible for registry, determining availability and appointing court visitor or GAL (**Neb. Rev. Stat. §30-2624, Neb. Ct. R. §6-1433.01(D)**)



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## Office of Public Guardian – Last resort, least restrictive, necessary services

Guardianship and Conservatorship as last resort; and least restrictive manner  
Other surrogate decision making processes  
Consider Limited Guardianship



- Limited Guardianship requires judges to craft orders to match the functional strengths of the individual:
  - Preserving autonomy in areas of retained capacities and
  - Delegating to limited guardians those areas of lost capacity
- Evaluation and quality evidence important re

## Definition and use of “Capacity” Depends

- Definition and use of “Capacity” depends on:
  - Different state statutes
  - Different legal standard for different
  - **Capacity status can fluctuate over time.**
    - Lost capacities (e.g., as a result of a head injury, transient acute psychosis, severe depression that later remits) may be recovered over time.
    - Dementias such as Alzheimer’s disease will result in fluctuating levels of capacity through the early and mid-stages of the disease.
    - Cognitive deficiencies that suggest incapacity are often caused by treatable and reversible physical causes, such as overmedication, toxic combinations of medications, poor diet, vitamin deficiencies, infectious diseases, poor eyesight, or other conditions.
    - Discovering and addressing medically treatable conditions first, capacity issues may be rendered moot or at least decreased.



## Capacity

- The term capacity is used in both clinical and legal settings.
- In legal settings:
  - A lawyer’s assessment of a client’s ability to conduct legal transactions or
  - A judicial determination of a person’s legal abilities to make decisions or perform certain functions.
- In clinical settings, it refers to a clinician’s opinion of a person’s abilities to make decisions or perform certain functions.
- Although a clinical capacity opinion is not a legal finding, it often serves as important evidence in legal proceedings.





## Capacity (continued)

### ■ Capacity Is Situational

- Capacity assessment should never happen in a vacuum.
- In the context of resources and support available to the individual. The supports may be social, such as a caregiver who can monitor the individual's medication regimen; legal, such as a trust or durable power of attorney that enables appropriate management of one's affairs; technological, such as an emergency help alert transmitter; or any other support.

### ■ Capacity Is Contextual

- Goes beyond the question of resources available to the individual and considers how the individuals interact with those resources and with their social and physical environment.
  - Issues of undue influence, exploitation, or threat can directly affect the autonomy, functioning, and well being of the person with diminished capacity.
  - A home environment that is familiar and comfortable for the individual may enhance capacity.
  - A new and unfamiliar setting may undermine functional capacity.
- **Capacity is not** "all or nothing"
  - Moved away from either/or to more finely tuned, functional definition
  - Person may lack the capacity to handle financial affairs but still retain the



## Problems with Clinical Assessment in Guardianship

- Available research finds significant problems with clinical evidence in guardianship proceedings for older adults.
- Capacity evaluations for guardianship have been found to be "sketchy" and "substandard,"
- Written descriptions that provide limited functional data and include conclusory findings
- Much clinical evidence is incomplete.
- The mean length of written clinical reports for guardianship of older adults ranges between 83 words in Massachusetts (with two-thirds of the written evidence illegible) and 781 words in Colorado (one to three pages) compared to 24 pages for the mean length of child custody evaluations.
- Results are Full Guardianship Orders based on Incomplete Information



## Clinical Evaluations Functional Evaluations

- Clinical evaluations are increasingly complex and increasingly crucial to preserving the autonomy and rights of vulnerable adults
- The Uniform Guardianship and Protective Proceedings Act
  - Model statute for adult guardianship
  - Recommends "detailed functional evaluation" by physicians, psychologists, or other qualified professionals, but
  - Does not describe what is meant by "functional evaluation."



## Court Visitor and GAL

- Volunteer Court Visitor Screening Form and CV/GAL Report
  - Based on NE. statute, research on Model guardianship investigator tools
- Judicial Determination of Capacity of Older Adults in Guardianship Proceedings©American Bar Association Commission on Law and Aging – American Psychological Association.



## Conceptual Model for Capacity



- Six key domains of capacity assessment consistent in legal and clinical sources
  - Medical diagnosis,
  - Cognition,
  - Everyday function,
  - Values and preferences,
  - Level of risk and supervision needed, and
  - Means to enhance capacity

## Model Clinical Evaluation Report Form



- Forms **available online** to download for ready use and modification at <http://www.abanet.org/aging> ; <http://www.apa.org/pi/aging> ; and <http://www.ncpj.org>.
- **Model Clinical Evaluation Report**
- **Supplemental Attachment/Links for Clinical Evaluation Report**
- **Clinical Evaluation Report Instructions**

## Develop A Court Visitor/Limited Guardian ad Litem Report Training Program



- A web based tool to deliver on-line education
- An on-line curriculum covers a variety of topics:
  - Introduction to Guardianship
  - Guardianship Authority
  - Surrogate Decision Making
  - Conditions of Potentially Incapacitated Persons or Wards
  - Living Arrangements of Potentially Incapacitated Persons
  - Common Problems
  - Abuse, Neglect, Exploitation
  - The Interview
  - Effective Communication
  - Community Resources
  - Directory of Legal & Medical Terms

## Guardian ad Litem Visitor Report Training



- On-line Modules and Face to Face Component required to complete OPG training for Visitor/Limited GAL Screening tool and Report form
- Training qualifies for MCLE: 5 hours on-line + 6 hours in class = 11 hours total.
- Cost for Screening tool and Report form training- \$175
- Participants who commit to volunteering for an Office of Public Guardian nominated case and complete a "Court Visitor/Limited Guardian ad Litem Report" will have \$150 waived (\$25 cost remains for administration of on line component)
- The Office of Public Guardian will provide the courts with information regarding who has completed the training

## Screening Tool to Facilitate Volunteer Court Visitor Info

To Assist Court in determining if Additional information required to Addresses Decision Making, Daily Living areas of Potentially Incapacitated Person (**Neb. Rev. Stat. §30-2619.01**) and Responsibilities Court May Grant to a Guardian (**Neb. Rev. Stat. §30-2620**):

- Mental Status
- Consistency of Choices with Values, Patterns & preferences
- Selecting Place of Abode
- Arranging Medical Care
- Protecting Personal Effects
- Giving necessary consents, Approvals or Releases
- Arranging Appropriate services, training, & education
- Daily Functional Abilities
- Applying for Benefit & Instituting Proceedings, Entering into Contracts
- Receiving Money & Property/ Applying such to Expenses



## Six Hour Face to Face Instruction

- Training on screening tool
- Skills development on completing the Visitor/Limited Guardian ad Litem Report Form



### • **BECOMING A VOLUNTEER COURT VISITOR**

- Please contact the OPG Education and Outreach Coordinator
- Linda Kallhoff
- 402.471.8839
- [Linda.Kallhoff@nebraska.gov](mailto:Linda.Kallhoff@nebraska.gov)

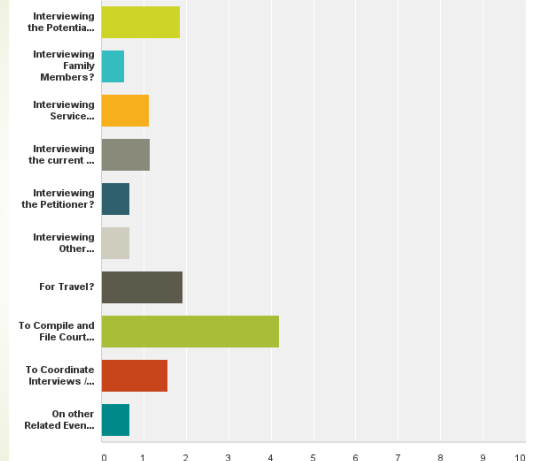
## OPG Volunteer Court Visitor Training Data through May 31, 2016

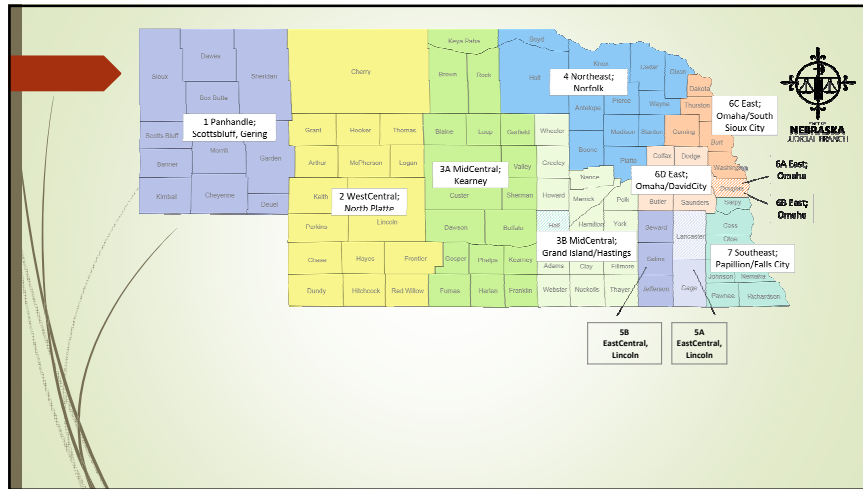


### Court Visitor Education

- 20 Live class sessions held between 9/8/15 through 5/31/16
- 29 Individuals completed both the on-line & classroom education
- 22 Individuals currently serving
  - 13 Volunteer "Civilians"
  - 9 Volunteer Attorneys
- 20 Live class sessions held between 9/8/15 through 5/31/16
- **257** Hours Contributed by Volunteer Court Visitors

## Summary of Time Spent By Court Visitors in each task area





## Office of Public Guardian Data and Reporting Requirements

- Develop a uniform system of reporting and collecting statistical data regarding guardianships/conservatorship (§30-4109)(1)
- Report to State Court Administrator, Chief Justice, and Legislature on the implementation of the Act on or before January 1 each year (§30-4111)
  - Number and types of guardianships/conservatorships appointed
  - Types: full, limited, temporary
  - Disposition of appointments
  - Fees charged and collected
  - Status of waiting list for services
- File an aggregate report, June 30th and January 1 each year, with the State Court Administrator describing efforts to locate successor guardian/conservator (§30-4114)

## OPG Wards and Protected Persons census as of May 31, 2016

- 111 Pending and Open cases
- 72 Open cases (47 Non-emergency; 25 Emergency)
- 10 Closed Cases
  - 5 Death of ward/protected persons
- 4 Other than English primary language (2 Spanish, 1 Arabic, 1 Vietnamese)

## OPG Ward/Protected Person Capacity Challenges

Diagnoses	Number of Nominations with individuals with this condition		
	Non-Emergency	Emergency	Total
Cognitive Impairment	37	14	57
Mental Health Diagnosis	47	17	64
Developmental Disabilities	19	4	23
Substance/Alcohol Abuse	19	4	23
Medical Condition	29	13	42
Unknown	6	0	6
History of Criminal Involvement	20	6	26
History of Mental Health Board Commitment	12	2	14
Totals	189	60	255



## Annual Report: 2015 OPG

<https://supremecourt.nebraska.gov/publications-and-reports>

Information regarding Implementation of OPG

Systems Issues involving Guardianships and Conservatorships (Page 67-77)

Forums for discussion with OPG and stakeholders, providers, advocates,

Court Visitor recruitment, training, utilization

Despite statutory mandate that Limited Guardianship be considered; Limited Guardianships are not utilized

Concerns re oversight of investigation re private guardianship and education

Wards and protected persons indicate a lack of ability to contest guardianship

Challenges with filing petitions to access OPG



## Systems Issues

- Social Services needs
  - Access to affordable housing
  - Supporting housing for people with mental illness
  - Access to inpatient rehab services
  - Transportation in rural Nebraska
  - Access to Emergency Services for persons under Temporary Guardianship
  - Lack of services and supports may cause filing for guardianships when not actually "last resort" but rather "last resort available"
  - OPG staff and private guardians who become "service providers" due to lack of benefits and services (although the ward is eligible)



## Responsibilities to Private Guardians by Office of Public Guardian

- Education
  - To all guardians and conservators
  - Court visitor training
  - About rights within the process
- Maintain training programs for private guardians, successor guardians and interested parties to include:
  - Guardian understand ward disabilities and Conservators to understand fiduciary duties
  - Help guardian encourage independence of ward as appropriate
  - Help guardian with plans and reports and conservator accountings
  - Advise on ways to secure rights, benefits and services for ward and protected persons



## Provide Private Guardianship Training

- Began January 1, 2016
- 2016 Schedule on Office of Public Guardianship website
  - <http://ne.gov/go/guardianeducation>
- Associate Public Guardians provide training in each OPG area
- Three-hour Face to Face Class required
- Spanish interpreters available as indicated on schedule
- Certification of Completion provided after class attendance
- \$35 per person
- Registration and payment available
  - On line <http://ne.gov/go/guardianeducation>
  - By phone 402.471.2862
- Payment and registration required one week prior to attending class

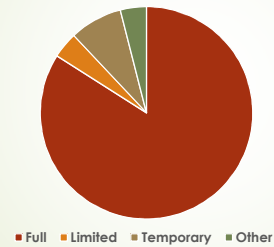


## Private Guardian/Conservator Education (January 1<sup>st</sup> through May 31<sup>st</sup>, 2016)



- **47** Guardian/Conservator Education Classes across Nebraska
- **499** Individuals completing the Guardian/Conservator Education Course

## Guardianship Class Survey: Guardianship Type

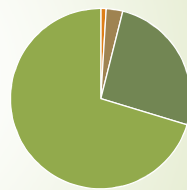
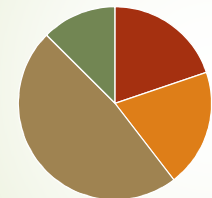


## Guardian Education Survey: Prepared to Serve as Guardian/Conservator



Before Class

After Class



■ Not at all    ■ Not Very  
■ Somewhat    ■ Very  
■ Extremely

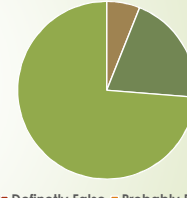
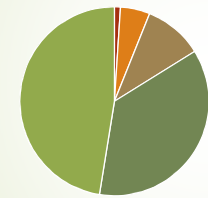
■ Not at all    ■ Not Very  
■ Somewhat    ■ Very  
■ Extremely

## Guardianship Education Survey: Understand duty to encourage physical, financial and personal independence of ward as much as possible. Neb. Rev. Stat. §30-4109(6)(b)



Before Class

After Class

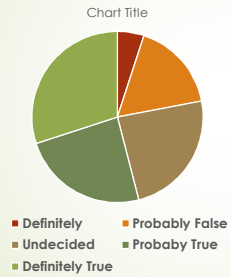


■ Definitely False    ■ Probably False  
■ Undecided    ■ Probably True  
■ Definitely True

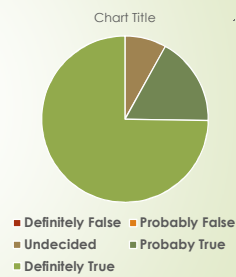
■ Definitely False    ■ Probably False  
■ Undecided    ■ Probably True  
■ Definitely True

**Guardianship Education Survey: I understand my responsibilities to the Court; filing an annual report. Neb. Rev. Stat. §30-4109(6)(c)**

Before Class



After Class



**Promote Public Awareness of Guardian and Conservatorships**



- Information
  - About the Office of Public Guardian
  - About guardianship, conservatorship, and alternatives
- Support
  - To all guardians and conservators
- Recruitment
  - Successor guardians and conservators
  - Court visitors
- Office of Public Guardian will promote:
  - The awareness of guardianship and conservatorships
  - The responsibility attached
  - The need for volunteers to serve as private guardians and conservators

**The Office of Public Guardian  
Contact Information**

Office of Public Guardian  
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PO Box 98910  
Lincoln, NE 68509  
Phone: 402-471-2862  
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